IN THE COUNTY COURT OF VICTORIA

Revised
Not Restricted
Suitable for Publication

AT MELBOURNE
CRIMINAL JURISDICTION

CR 20-00008

DIRECTOR OF PUBLIC PROSECUTIONS

v

NATASHA KOVACEVIC

JUDGE:	HIS HONOUR JUDGE DEAN
WHERE HELD:	Melbourne
DATE OF HEARING:	17, 20 June 2020
DATE OF SENTENCE:	29 June 2020
CASE MAY BE CITED AS:	DPP v KOVACEVIC
MEDIUM NEUTRAL CITATION:	[2020] VCC 949

REASONS FOR SENTENCE

Subject: CRIMINAL LAW

Catchwords: Sentence – Plea of guilty – Obtaining a financial advantage by deception – Gambling addiction – Combination sentence

Legislation Cited: *Crimes Act* 1958, *Sentencing Act* 2001

Cases Cited: *Markovic v The Queen* (2010) 30 VR 589

Sentence: Total effective sentence of 12 months imprisonment and a Community Correction Order of 2 years – Pre-sentence detention of 7 days declared as having been served – s.6AAA declaration – 2 years imprisonment with a non-parole period of 1 year 3 months imprisonment

---

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Ms E. Maguire	OPP

For the Accused	Mr T. Schocker	Stary and Associates

HIS HONOUR:

1 Natasha Kovacevic, you have pleaded guilty to five charges of obtaining a financial advantage by deception, contrary to s.82(1) of the *Crimes Act* 1958. The maximum penalty for that offence is five years imprisonment.

2 You pleaded guilty at committal mention and I have taken your early plea into account in your favour in mitigation of sentence. I accept that your plea is evidence of remorse for your offending, and further, that it has spared the community and witnesses, the burden of a committal and a complex criminal trial in this case.

3 You have no prior convictions or subsequent convictions and there are no outstanding charges in your case. You are a person of hitherto good character and I have received in evidence, a number of character references that speak highly of you, in a variety of contexts.

4 Your good character is a factor in your favour, in mitigation of sentence, although this is not an uncommon feature in offending of this nature.

5 The Summary of Prosecution Opening, which was accepted as accurate on your behalf, was tendered in evidence, and your offending may be summarised as follows -

6 Between 18 February 2013 and 15 March 2017, you were employed as the financial controller of Clutch Industries Proprietary Limited, an automotive business operating in Thomastown.

7 At all relevant times, you were a Certified Practising Accountant and you were responsible for managing accounts payable and receivable by the business, together with profit and loss reporting. A significant customer of Clutch Industries was Repco Australia and a warranty account was maintained by Clutch Industries, which permitted Repco to make warranty claims without the

prior approval of Clutch Industries. During the period of the charges you have pleaded guilty to, you created false Repco invoices to be paid by Clutch Industries from the warranty account. You did this on 131 occasions, in the total sum of $631,697.84. The funds used to pay the false invoices were paid to six bank accounts operated by you. Five of which were in your name and one of which was in your mother's name.

8 The five charges you have pleaded guilty to are 'rolled up charges', representing the following offending –

9 Charge 1, 30 separate transactions, amounting to a total of $94,433.56. Charge 2, 17 separate transactions, amounting to a total of $230,100.26. Charge 3, 27 separate transactions, amounting to a total of $139,618.81. Charge 4, 43 separate transactions, amounting to a total of $141,640.74. Charge 5, 9 separate transactions, amounting to a total of $25,904.47.

10 In sentencing you, in relation to a rolled up charge, a procedure adopted with your consent, I am of course constrained by the maximum penalty in respect of each charge and I am sentencing you for one charge in each instance. But I am nevertheless permitted to have regard to the overall extent of your offending in respect of each individual charge. The individual transactions range between the sums of $1,100 and $50,000.

11 On 15 March 2017, you resigned from Clutch Industries, at which time, your renumeration package then totalled $155,000. Following your resignation, an audit revealed your offending and Clutch Industries thereafter commenced civil proceedings against you and your mother with a view to recovering the moneys you had misappropriated. Following the resolution of the civil proceedings, the matter was reported to investigating police.

12 You were arrested on 2 October 2019 and during the course of an interview with investigators, made full admissions to them. You stated that Clutch

Industries had poor financial controls in place and that your offending was motivated by your gambling addiction. It was accepted by investigators that your mother had no role in your offending. Clutch Industries recovered $250,000 of its losses pursuant to an insurance policy held by it and you paid to it a further sum of $400,000, in settlement of the civil proceedings commenced in the Supreme Court of Victoria to recover the moneys lost.

13 I have received in evidence a Victim Impact Statement prepared by Christopher Hatton, a director of Clutch Industries, and I accept that your offending had an adverse effect on the operation of the business and that it amounts to a gross breach of the trust placed in you. Clutch Industries was completely entitled to expect you to carry out your duties honestly and with professional integrity, and I reject any suggestion by you that the conditions of your employment somehow justified your serious offending.

14 You engaged in planned and thoroughly criminal dishonesty, over a period of four years, and in breach of your professional duties as an accountant. In my opinion, your moral culpability for your offending is high and as I observed during the course of the plea hearing, just punishment is an important sentencing consideration in your case. As the relevant authorities made clear, general deterrence is a significant sentencing consideration in cases of this type. And industry must be protected from systematic dishonesty, carried out by persons like you.

15 I now turn to your personal circumstances.

16 You were born on 28 February 1980 in Melbourne and are now aged 40. You are the oldest of four children. Your parents are of Serbian heritage and migrated to Australia from the then Yugoslavia in 1972. You were educated at a Catholic girls college to Year 11 and Kew High School in Year 12, where you completed the VCE. You then completed an Advanced Diploma in Business

and a Bachelor of Business Accounting at RMIT. In 2008, you became a Certified Practising Accountant.

17 You are obviously an intelligent person and, by reason of your occupation as an accountant, must have fully understood the gravity of your dishonesty and its impact on Clutch Industries. Nevertheless, a significant body of evidence before me establishes that at the time of your offending, you were in the grip of a severe gambling addiction. The origin of this lies, as is often the case, in a dysfunctional and abusive relationship with your then partner. The relationship commenced in 2001 when you were 20 years old and ceased with you becoming pregnant with your son, who was born on 13 March 2018. I have received in evidence a number of references that you describe your ex-partner as abusive, manipulative and controlling. The relationship is further described in the references as toxic and characterised by frequent separations.

18 In 2010, your partner introduced you to gambling, principally poker machines and in your vulnerable state, your addiction escalated. The statement of Jared Curtain, a forensic accountant, at page 343 of the depositions reveals that between 18 February 2013 and 26 May 2017, the sum of $866,980 was withdrawn in cash from ATM machines from accounts in your name. This substantial sum of money supports the finding that your offending was driven by your uncontrolled gambling addiction.

19 Your gambling addiction, however, does not mitigate your offending, but it does explain why you embarked on such systematic dishonesty.

20 Since your offending, you have undertaken extensive counselling with Banyule Community Health, in relation to your gambling addiction, involving a total of 37 sessions with Violeta Stankovska, a specialist therapeutic counsellor. You have also attended the Salvation Army Gambling Counselling

Service on 13 occasions, in relation to your financial circumstances and furthermore, you have also executed self-exclusion orders, in relation to a number of gambling venues. Your gambling addiction is currently in remission, but you will require ongoing counselling to reduce the risk of relapse and in turn, reoffending.

21 Following your resignation from Clutch Industries, you commenced employment for five weeks in 2018 with Vehicle Development Corporation and in 2019 returned to conduct an audit of its accounts, as the directors of that company had noticed irregularities. Following your audit, it was revealed that a bookkeeper at the business had misappropriated moneys and you have provided a witness statement to Victoria Police in relation to your audit. You have also agreed to give evidence for the prosecution, in criminal proceedings against the bookkeeper and your evidence will be significant in the prosecution case. I have taken your cooperation with authorities into account in your favour in mitigation of sentence and I also accept that the hardship of imprisonment, in your case, will be compounded by the fact that you are a prosecution witness in criminal proceedings. You have given a sworn undertaking to this court to give evidence and this fact will be entered into the records of this court. This is a significant factor in your favour.

22 Another significant factor relied on by your counsel in your case, is the fact that in the event of your imprisonment, your 2 year old son will reside with you in prison. I have received in evidence a letter from Melissa Western, Deputy Commissioner Custodial Operations with Corrections Victoria, confirming that your son will reside with you, pursuant to the Living with Mum Program. The material before me does not establish whether there will be other children in prison with whom your son may interact, or the nature of the facilities that will be available to him. It is clear that he will not have frequent and unsupervised contact with other members of your family, including his grandparents, aunts,

uncles and cousins. And whilst the COVID-19 restrictions are in place, he will not receive such visits at all and nor will you.

23 It is far from clear how long the COVID-19 restrictions will be in place in the Victorian prison system, but I accept that it is unlikely that the restrictions will be eased in the near future. Furthermore, you and your son will be in quarantine for 14 days upon your respective entries into the prison system. I am satisfied that the entry of your son, into the prison system, to reside with you during the COVID-19 pandemic, and the restrictions in place, is an exceptional circumstance of the kind referred to by the Court of Appeal in *Markovic v The Queen* (2010) 30 VR 589. It is therefore appropriate for me to take the hardship that your son will encounter by reason of your imprisonment into account in mitigation of the sentence I would otherwise impose on you.

24 The COVID-19 restrictions will also increase the hardship of imprisonment in your case. As I have said, you will not receive visits or engage in the usual prison programs.

25 I have also received in evidence a psychological report of Mr Peter Hanley, detailing your background and psychological profile. As I observed during the plea hearing, the report details your lack of insight into your offending and the pervasive sense of entitlement that underpins your personality. Mr Hanley did not conclude, however, that you are suffering from a personality disorder, but recommends that you undergo a lengthy period of psychological treatment to address the risk of reoffending in your case. He recommends supervision in your case, in order to ensure that you will fully engage with the treatment that you require.

26 Your counsel also relied on delay in your case. As I observed during the course of the hearing, the responsibility for the delay may not be placed at the feet of the prosecution, but I accept that there has been delay in your case

and that you have not reoffended during that time.

27 Yours is plainly a very serious example of the type of offending you have pleaded guilty to and generally speaking, a significant term of imprisonment, with an appropriate non-parole period would be imposed in such a case.

28 However, for the reasons that I have set out, I am satisfied that in the particular and exceptional circumstances of this case, it is appropriate for me to impose a term of imprisonment, in combination with an onerous Community Correction Order. This combination of dispositions is, in my opinion, the most suitable penalty available to me to achieve the purposes for which this sentence is to be imposed. I have received from Corrections Victoria a report setting out that you are suitable for such a disposition.

29 In the result, the sentence of the court is as follows -

30 On the five charges of obtaining a financial advantage by deception, you are convicted and sentenced to an aggregate term of imprisonment of 12 months.

31 You are also sentenced to a Community Correction Order for a period of two years, to commence at the completion of the term of imprisonment. The order will be on the mandatory conditions provided for in the *Sentencing Act* and the following special conditions –

32 i. During the period of the order, you will be under the supervision of a Corrections officer;

33 ii. During the period of the order, you perform 150 hours unpaid community work;

34 iii. During the period of the order, you undertake assessment and treatment for mental health and;

35 iv. During the period of the order, you undertake programs to reduce the risk

of reoffending in your case.

36 Do you agree to entering such an order Ms Kovacevic?

37 OFFENDER: Yes.

38 HIS HONOUR: Thank you. The order will be emailed to Corrections for you to sign and it will then be returned to the court.

39 I declare that you have served seven days imprisonment, not including today by way of pre-sentence detention.

40 But for your plea of guilty, I would have imposed a total effective term of imprisonment in your case of two years and fixed a non-parole period of 15 months.

41 Are there any further orders required?

42 MR SCHOCKER: No, Your Honour.

43 HIS HONOUR: Thank you. All right, so I have signed the Community Corrections Order and it will be forwarded to her.

44 HIS HONOUR: You can explain to your client the effect of it.

45 MR SCHOCKER: Yes, Your Honour.

46 HIS HONOUR: I'm not sure how you'd contact her Mr Schocker, but you might be able to write her an email or something.

47 MR SCHOCKER: I should be able to make a phone call this afternoon, Your Honour.

48 HIS HONOUR: Yes, all right. So we'll print off a copy of that for you now and as I say, it will be emailed to the prison. Those arrangements have been

made I take it?

49 ASSOCIATE: Yes, Your Honour.

50 HIS HONOUR: Ms Kovacevic has to sign the Community Correction Order and it will then be returned to the court and placed on the court record. My associate will provide you with a copy of it now Mr Schocker.

51 MR SCHOCKER: Thank you, Your Honour

52 HIS HONOUR: The court will adjourn till half past nine tomorrow.